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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,643	04/02/2004	Guo-Hua Zheng	CGL02/0474US01	2858

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CARGILL, INCORPORATED
LAW/24
15407 MCGINTY ROAD WEST
WAYZATA, MN 55391

EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/817,643	ZHENG ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-52* is/are pending in the application.

4a) Of the above claim(s) *24-31 and 33-52* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23 and 32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's election of Group I, claims 1-25, 32 in the reply filed on 12/26/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The restriction also includes a requirement for election of species between food and beverage. Since applicant elects food, claims 24-25 will not be examined because it is directed to a non-elected species.

Claims 7-9, 17-18, 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, the defining of the flavor intensity is indefinite because it is relative; 5 in comparison to what and 5 what.

Claims 8-9 have the same problem as claim 7.

In claim 17, it is not clear if applicant intends for a Markush group; if so, the proper language is " selected from the group consisting of".

Claim 18 has the same problem as claim 17. Additionally, the term " bakery mixes" is indefinite because it is not known what type of food is encompassed in the term.

Claim 20 has the same problem as claim 17.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-16 and 32 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morgan (20030154974).

Morgan discloses a fiber composition from cereal grain such as barley and oats. The composition comprises beta glucan. The beta glucan gel , once formed, is washed with water to remove starch or protein or starch or protein that may have been hydrolyse. Starch may be removed by adding amylase; it is preferable during be glucan extraction to add an enzyme to reduce the average molecular weight of the glucan. The enzyme is cellulose. The low molecular weight beta glucan has an average molecular weight in the range of 5000-200000 daltons. (see paragraphs 0013, 0014, 0015, 0017, 0025, 0026, 0038.

Morgan discloses a fiber composition having the molecular weight as claimed. However, Morgan is silent with respect to the viscosity, the protein content, the fat content, the percent of beta glucan and the flavor intensity. However, the fiber composition in Morgan is prepared by substantially the same method as disclosed and the composition has a molecular weight within the range claimed; thus, it is inherent the composition will have the same viscosity, the protein, fat and beta glucan and flavor intensity as claimed. However, if it is not inherent, it would have been obvious to one skilled in the art to adjust processing parameter to adjust parameters such as viscosity, fat, protein, beta glucan and flavor intensity depending on the properties wanted for the product.

Claims 1-15, 32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wang et al (5512287).

Wang et al disclose a fiber composition comprising beta glucan obtained from cereal grains. The composition contains 60-90% beta glucan and the beta glucan has a molecular weight in the range of 400000-2000000 daltons. The beta glucan has a neutral flavor and is readily soluble in water. Column 5 shows that the beta glucan composition contains 2% protein and less than 1% fat. (see also col. 2 lines 25-35)

Wang et al disclose a fiber composition having the molecular weight as claimed. However, Wang et al are silent with respect to the viscosity and the flavor intensity. However, the fiber composition in Wang et al has a molecular weight within the range claimed and it is the same type of fiber as claimed; thus, it is inherent the composition will have the same viscosity and flavor intensity as claimed. However, if it is not inherent, it would have been obvious to one skilled in the art to adjust processing parameter to adjust parameter such as viscosity depending on the properties wanted for the product.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan (20030154974).

Morgan does not disclose the specific foods and the formulation for such foods as claimed.

Morgan discloses in paragraph 0019 to add the fiber composition to processed foods. Thus, it would have been obvious to one skilled in the art to add the fiber composition to any type of food when desiring to enrich such food with beta glucan to obtain the health benefits provided by beta glucan. Formulations for food products can vary. All the foods claimed are well known in the art; thus, it would have been within the skill of one in the art to determine the formulation for any particular food without undue experimentation.

Claims 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al (5512287)

Wang et al do not disclose the specific foods and the formulation for such foods as claimed.

Adding beta-glucan to food products is notoriously well known in the art as exemplified in the references submitted by applicant, particular the Smith patent (5458893). Thus, it would have been obvious to one skilled in the art to add the fiber composition to any type of food when desiring to enrich such food with beta glucan to

obtain the health benefits provided by beta glucan. Formulations for food products can vary. All the foods claimed are well known in the art; thus, it would have been within the skill of one in the art to determine the formulation for any particular food without undue experimentation.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Heddleson et al disclose food products containing short beta glucan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ltran

LIEN T.
PRIMARY E.
Group 1700